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6 Attorneys for Petitioner
7 United States of America

8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)
12)
Petitioner,)
13)
v.)
14 DAVID REYES, JR.,)
15)
Respondent.)

Civil No. **'08 CV 0963 IEG CAB**
PETITION TO ENFORCE INTERNAL
REVENUE SERVICE SUMMONS

16
17 Petitioner, the United States of America, by and through its
18 counsel, Karen P. Hewitt, United States Attorney, and Carol M. Lee,
19 Assistant United States Attorney, petitions the Court for an order to
20 enforce the Internal Revenue Service ("IRS") summons described below
21 and, in support thereof, alleges as follows:

22 1. This proceeding is brought at the request of the Chief
23 Counsel, IRS, a delegate of the Secretary of the Treasury, and at the
24 direction of the Attorney General of the United States.

25 2. Jurisdiction over these proceedings is conferred upon this
26 Court by the Internal Revenue Code, 26 U.S.C. §§ 7402(b) and 7604(a)
27 and 28 U.S.C. § 1345.
28

FILED
2008 MAY 30 PM 12:39
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY KNH DEPUTY

CR

1 3. Venue is proper in the Southern District of California
2 because David Reyes, Jr., ("Respondent") resides in this district.

3 4. At all times relevant, S. Silverman, who issued the summons
4 to Respondent, was a Revenue Officer with the IRS, employed in the
5 California Area, Long Beach Territory 1, Group 15, of the Small
6 Business/Self-Employed Division of the IRS in San Diego, California.
7 See Declaration of Revenue Officer S. Silverman at ¶ 1 ("Silverman
8 Decl."). Revenue Officer S. Silverman was authorized to issue an IRS
9 summons pursuant to the authority contained in 26 U.S.C. § 7602, and
10 Treas. Reg. § 301.7602-1.

11 5. Respondent resides at 13500 Ginger Glen Road, San Diego,
12 California, 92130, which is within the jurisdiction of this Court.

13 6. On June 27, 2007, Revenue Officer Silverman issued two
14 administrative summonses to Respondent, directing Respondent to appear
15 before him on July 17, 2007, at 9:00 a.m. at 880 Front Street, San
16 Diego, California, to give testimony and to produce for examination
17 the documents and records specified in the summonses. The first
18 summons, IRS Form 2039 ("Form 2039"), was issued to determine
19 Respondent's ability to pay and concerned collection of his assessed
20 income tax liability for the tax years 1999 to 2005. The second
21 summons, IRS Form 6638 ("Form 6638"), seeks income tax return
22 information for the unfiled tax years of 1995, 1996, 1998, and 2005.
23 A copy of the summonses are attached to Officer Silverman's
24 Declaration as Exhibit A. As detailed in this Petition, Respondent
25 substantially complied with the first summons ("Form 2039") and the
26 United States is not seeking enforcement of it. However, the United
27 States is seeking enforcement of the second summons ("Form 6638")
28 because to date, Respondent has not complied with this summons.

1 4. On June 29, 2007, Revenue Officer Silverman served both
2 summonses by handing an attested copy of each to the Respondent.

3 5. On July 17, 2007, Respondent failed to appear. However, on
4 this date, Revenue Officer Silverman received a telephone call from
5 Steven Mopsick who said that he was Respondent's attorney and that he
6 was in the process of gathering the necessary documents to prepare the
7 tax returns and needed additional time till July 20, 2007, which
8 Revenue Officer Silverman granted.

9 6. On July 20, 2007, neither Respondent nor his attorney Steven
10 Mopsick contacted Revenue Officer Silverman. On July 25, 2007,
11 Revenue Officer Silverman received some documents in partial
12 compliance with the summonses from Mr. Mopsick via facsimile.
13 However, the information was insufficient and not in full compliance
14 with the summonses.

15 7. On October 12, 2007, Revenue Officer Silverman met with the
16 Respondent at his office, who appeared in response to a "last chance"
17 letter from the IRS Counsel's Office. During the meeting Respondent
18 said he needed an extension and that "Powell and Associates" was
19 preparing Respondent's tax returns. At this meeting Revenue Officer
20 Silverman told Respondent that if the summonses were not complied with
21 in two weeks, his case would be referred for enforcement.

22 8. On October 16, 2007, Revenue Officer Silverman spoke to
23 Mr. Mopsick and granted another extension until October 31, 2007, for
24 Respondent to provide the balance of the financial information and an
25 extension until November 29, 2007, to have all the income tax
26 information submitted. Ultimately, Respondent did comply with the
27 financial statement summons (IRS Form 2039). However, Respondent
28 still needs to comply with the income tax return information summons
(Form 6638).

1 9. Shortly thereafter, due to the San Diego wildfires, all
2 summons enforcement was placed on hold until January 2008. On
3 December 6, 2007, per Mr. Mopsick's request, Revenue Officer Silverman
4 granted another extension until January 2, 2008, to file all the
5 returns and provide updated information. On January 7, 2008, Mr.
6 Mopsick informed Revenue Officer Silverman that he was only acting as
7 Respondent's power of attorney.

8 10. On February 11, 2008, Revenue Officer Silverman spoke to
9 Respondent's live-in girlfriend or fiancée, Julie Williams, who said
10 that Respondent had his own business, Reyes Consulting. Revenue
11 Officer has had no further contact with Respondent or anyone acting
12 on behalf of Respondent.

13 11. All administrative steps required by the Internal Revenue
14 Code for the issuance of the summons have been taken. Silverman Decl.
15 at para. 14.

16 12. In order to obtain judicial enforcement of an IRS summons,
17 the United States bears the initial burden of showing "that the
18 investigation may be relevant to the purpose, that the information
19 sought is not already within the Commissioner's possession, and that
20 the administrative steps required by the Code have been followed . .
21 . ." United States v. Powell, 379 U.S. 48, 57-58 (1964); accord,
22 United States v. Dynavac, 6 F.3d 1407 (9th Cir. 1993). The burden on
23 the Government is a "slight one" and may be satisfied by presenting
24 the declaration of the agent who issued the summons and is seeking
25 enforcement. Id. (citing United States v. Abrahams, 905 F.2d 1276,
26 1280 (9th Cir. 1990) (other citations omitted)). Once a prima facie
27 case has been made, "a 'heavy' burden falls on the taxpayer" to show
28 an abuse of the court's process or lack of institutional good faith,

1 Dynavac, 6 F.3d at 1280, and respondent "must allege specific facts
2 and evidence to support his allegations." Liberty Financial Services
3 v. United States, 778 F. 2d 1290, 1292 (9th Cir. 1985) (citation
4 omitted). This matter may be decided on the written record in a
5 summary proceeding. Hotz v. United States, 96-1 USTC para. 50,097 at
6 p. 83,363 (E.D. Calif. 1996). To be entitled to an evidentiary
7 hearing, a respondent must make some showing to refute the United
8 States' prima facie case or present facts supporting an affirmative
9 defense. See Fortney v. United States, 59 F.3d 117, 121 (9th Cir.
10 1995).

11 13. Revenue Officer Silverman is conducting an investigation to
12 determine Respondent's income tax return information for the unfiled
13 tax years of 1995, 1996, 1998, and 2005. Silverman Decl. at para. 4.

14 14. Section 7602(a) of the Code specifically allows the issuance
15 of a summons for the purpose of "determining the liability of any
16 person for any internal revenue tax . . . or collecting any such
17 liability" 26 U.S.C. §7602(a). Therefore, Revenue Officer
18 Silverman's investigation is being conducted pursuant to a legitimate
19 purpose specifically authorized by statute.

20 15. Further, the testimony, books, papers, records, or other
21 data sought by the summons are not already in the possession of the
22 IRS and the administrative steps required by the Code, including
23 proper service, have been followed. Silverman Decl. at para. 13 and
24 14.

25 16. Respondent is in possession and control of the testimony and
26 documents concerning the above-described investigation.

27 17. The Internal Revenue Code permits the Secretary to summon
28 the records of any person "which may be relevant or material" to the

1 investigation. 26 U.S.C. § 7602(a)(1). It is well-settled that to
2 satisfy the relevancy requirement set forth in Powell, the United
3 States must demonstrate that the summoned information may throw light
4 on the subject of the investigation. Abrahams, 905 F.2d at 1281;
5 United States v. Arthur Young & Co., 465 U.S. 805, 813-14, n. 11
6 (1984). This standard necessarily presents a low threshold because
7 of the inherent difficulties in ascertaining, prior to examination,
8 how much use the summoned records will be in determining the
9 collectibility of a person's tax liability and whether a person has
10 an income tax liability for a specific period. The Supreme Court has
11 observed that:

12 [a]s the language of §7602 clearly indicates, an IRS
13 summons is not to be judged by the relevance standards used
in deciding whether to admit evidence in federal court . . .

14 . . . The language 'may be' reflects Congress' express
15 intention to allow the IRS to obtain items of even
16 potential relevance to an ongoing investigation, without
reference to its admissibility. The purpose of Congress is
obvious: the Service can hardly be expected to know which
data will be relevant until it is procured and scrutinized.

17 Arthur Young & Co., 465 U.S. at 814 (internal citation omitted)
18 (emphasis in the original). This low threshold of relevance also
19 follows from the language of the Code, which authorizes the
20 investigation of persons who "may be liable" for taxes. 26 U.S.C.
21 § 7601.

22 18. Under the instant circumstances, it is clear that the
23 summoned material is relevant. The purpose of Revenue Officer
24 Silverman's investigation is to determine Respondent's income tax
25 return information for the unfiled tax years of 1995, 1996, 1998, and
26 2005. The Summons seeks, among other things, " . . . all bank
27 statements, checkbooks, canceled checks, savings account passbooks,
28 records, or certificates of deposit" Silverman Decl. at

1 Exhibit A (Form 6638). The documents sought by this summons are
2 clearly relevant to determine Respondent's income tax return
3 information for the unfiled tax years of 1995, 1996, 1998, and 2005.

4 19. There is no Department of Justice referral for criminal
5 prosecution in effect with respect to Respondent. Silverman Decl. at
6 para. 16.

7 WHEREFORE, the United States requests that:

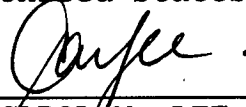
8 1. The Court enter an order directing Respondent, David Reyes,
9 Jr., to show cause, if any, why he should not comply with and obey the
10 above-described summons (Silverman Decl. at Exhibit A, Form 6638)
11 served on him personally on June 27, 2007, and each and every
12 requirement thereof, by ordering the attendance, testimony, and
13 production of the books, papers, records, and other data required and
14 called for by the terms of the summons before Revenue Officer
15 S. Silverman, or any other proper officer or employee of the Internal
16 Revenue Service at such time and place as may be fixed by Revenue
17 Officer Silverman or any other proper officer or employee of the
18 Internal Revenue Service.

19 2. That the United States recover the costs and expenses
20 incurred in maintaining this action against Respondent.

21 3. That the Court grant such other and further relief as may
22 be required.

23 DATED: 5/29/08

KAREN P. HEWITT
United States Attorney


CAROL M. LEE
Assistant U.S. Attorney

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

San Diego

DEFENDANTS

DAVID REYES MAY 30 PM 12:40

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

CAROL M. LEE
880 FRONT STREET, ROOM 6293
SAN DIEGO, CA 92101-8893
(619) 557-6235

ATTORNEYS (IF KNOWN)

08 CV 0963 IEG CAB

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | | PT | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Petition to Enforce Internal Revenue Service Summons

JSC 7402(6)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 315 Airplane Product	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 320 Assault, Libel &	<input type="checkbox"/> 625 Drug Related of Property 21 USC881	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce/ICC
<input type="checkbox"/> 150 Recovery of Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 470 Racketeer Influenced Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Veterans Benefits	<input type="checkbox"/> 355 Motor Vehicle Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 360 Other Personal	<input type="checkbox"/> 710 Fair Labor Standards	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 365 Property Damage Product Liability	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 730 Labor/Mgmt. Disclosure Act	<input checked="" type="checkbox"/> 870 Taxes (U.S. or Defendant)	<input type="checkbox"/> 892 Economic
<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> CIVIL RIGHTS	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 790 Other Labor		<input type="checkbox"/> 894 Energy Allocation
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 895 Freedom of
<input type="checkbox"/> 230 Rent Lease &	<input type="checkbox"/> 443			<input type="checkbox"/> 900 Appeal of Fee Under Equal Access to
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare			<input type="checkbox"/> 950 Constitutionality of
<input type="checkbox"/> 245 Tort Product	<input type="checkbox"/> 440 Other Civil Rights			<input type="checkbox"/> 890 Other Statutory
<input type="checkbox"/> 290 All Other Real	<input type="checkbox"/> PRISONER PETITIONS			
	<input type="checkbox"/> 510 Motions to Vacate Habeas Corpus			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prisoner Conditions			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removal from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See

JUDGE

Docket Number

DATE

5/30/08

SIGNATURE OF ATTORNEY OF RECORD

CAROL M. LEE, AUSA